

FILED
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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CIVIL ACTION NO. 03-12307-RGS
U.S. DISTRICT COURT
DISTRICT OF MASS.

JOSEPH CHRISTOFORO
Plaintiff,

v.

JULIO LUPO, FRANK G. COUSINS, JR.
INDIVIDUALLY AND IN HIS CAPACITY
AS ESSEX COUNTY SHERIFF AND
CERTAIN UNKNOWN INDIVIDUALS
Defendants

**DEFENDANT FRANK G. COUSINS' ANSWER TO
CO-DEFENDANT LUPO'S CROSSCLAIM**

1. The defendant admits the allegations contained in paragraph 1.
2. The defendant admits the allegations contained in paragraph 2.

COUNT I - INDEMNITY

3. Defendant Cousins repeats and reaffirms his responses to the allegations set forth in the proceeding paragraphs.
- 4.
5. The defendant denies the allegations contained in paragraph 5.
6. The defendant denies the allegations contained in paragraph 6.

COUNT II - CONTRIBUTION

7. Defendant Cousins repeats and reaffirms his responses to the allegations set forth in the proceeding paragraphs.
8. The defendant denies the allegations contained in paragraph 8.
9. The defendant denies the allegations contained in paragraph 9.

DEMAND FOR JURY TRIAL

The defendant requests a trial by jury on all counts.

AFFIRMATIVE DEFENSES

First

The defendant states that the crossclaim has failed to state a claim upon which relief can be granted.

Second

The defendant states that the crossclaimant's claims are barred by the doctrine of qualified immunity as the alleged acts complained occurred within the scope of the defendant's official duties and the defendant had no knowledge that said alleged acts were illegal and/or unconstitutional nor were said alleged acts clearly violative of the crossclaimant's rights at the time they were legally committed.

Third

The defendant states that the crossclaimant's claims are frivolous and advanced in good faith and therefore, he is entitled to costs and attorneys fees pursuant to 42 USC §1998.

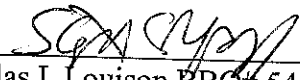
Fourth

The defendant states that the crossclaimant is estopped from recovery by virtue of the fact that the complaint contains allegations wholly unsubstantial and not advanced in good faith and as such Cousins is entitled to costs and attorneys fees pursuant to M.G.L. c. 231, §6(f) and is otherwise allowed by law.

Fifth

The defendant states that it reserves the right, after entering discovery to file additional affirmative defenses, claims and actions as may be necessary, compulsory or available.


Defendant, Sheriff Frank G. Cousins,
By his attorneys,



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Stephen C. Pfaff BBO# 553057
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CERTIFICATE OF SERVICE

I, Stephen C. Pfaff, hereby certify that on the 28 day of June, 2004, I served the foregoing by causing a copy to be mailed, postage prepaid, directed to Joseph T. Desmond, Esquire, McCormick & Maitland, 144 Main Street, P.O. Box S18, Norfolk, MA 02056 and Joseph W. Monahan, III, Monahan & Padellaro, 43 Thorndike Street, Cambridge, MA 02141.



Stephen C. Pfaff